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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,874	03/03/2003	Ivan Vachovsky		6660

7590 04/12/2006  
Ivan Vachovsky  
10350 Barnes Canyon Rd.  
San Diego, CA 92121

EXAMINER

CORRIELUS, JEAN M

ART UNIT PAPER NUMBER

2162

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/689,874

Applicant(s)

VACHOVSKY, IVAN

Examiner

Jean M. Corrielus

Art Unit

2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

1. This office action is in response to the request for consideration filed on February 22, 2006, in which claims 1-10 and 13-16 are presented for further examination.

### *Response to Arguments*

2. Applicant's arguments filed February 22, 2006 have been fully considered but they are not persuasive. (See Examiner's remark).

### *Priority*

3. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. The provisional application upon which priority is claimed has been considered as to the merits.

### *Drawings*

4. Applicants are required to furnish the formal drawings in response to this office action if the formal drawings have not been submitted. No new matter may be introduced in the required drawings. Failure to timely submit a drawing will result in ABANDONMENT of the application.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-10 and 13-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Walters et al., (hereinafter “Walters”) US Patent no. 6,914,695.

As to claim 1, Walters discloses the claimed “a computer having a memory” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.9, lines 64-67; col.10, lines 1- 8 and lines 40-51); “a portable memory device reader, communicatively connected to the computer and being selectively coupleable to the portable memory device” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.9, lines 64-67; col.10, lines 1-18); “an image transfer module, connected to the portable memory device reader and configured to detect the coupling of the portable memory device to said reader and to copy the digital image from the portable memory device to the computer memory, by way of said reader” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines

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38-62; col.10, lines 53-67; col.11, lines 5-13); “a file uploader module, communicatively connected to the image transfer module and configured to send the digital image to the online server, connected to the computer network” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.11, lines 39-48); and “the online server, being selectively connected to the file uploader module and being configured to automatically accept, store and make available over the computer network the digital image” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.9, lines 5-22).

As to claim 2, Walters discloses the claimed “a billing and provisioning system, connected to the online server and including a relational database, the billing and provisioning system being configured to store user accounts in the database” (col.8, lines 11-22, lines 38-50).

As to claim 3, Walters discloses the claimed wherein the online server includes one or more albums, each album being associated with a single user, and wherein at least one album includes a folder” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62).

As to claim 4, Walters discloses the claimed “an album tools module which allows a user to manipulate, delete, and create folders in an album that is associated with the user” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62).

As to claim 5, Walters discloses the claimed “wherein each folder possesses distinct privacy settings” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.11, lines 39-48).

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As to claim 6, Walters discloses the claimed “inserting the portable memory device into a portable memory device reader” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.9, lines 64-67; col.10, lines 1- 8 and lines 40-51); “reading the image at the portable memory device” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.9, lines 64-67; col.10, lines 1- 8 and lines 40-51); “copying the image to computer memory using an image transfer module, residing on a local computer connected to the network” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.10, lines 53-67; col.11, lines 5-13); “sending the image over a computer network to an online photo album server by a file uploader module”(col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.11, lines 39-48); and “making the image available over the computer network by the online photo album server” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.9, lines 5-22).

As to claim 7, Walters discloses the claimed “creating a photo album in the online server by a user” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62).

As to claim 8, Walters discloses the claimed “placing the image in the photo album” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.10, lines 53-67; col.11, lines 5-13).

As to claim 9, Walters discloses the claimed “deleting a photo album” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62).

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As to claim 10, Walters discloses the claimed “a computer having a memory” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.9, lines 64-67; col.10, lines 1- 8 and lines 40-51); “an electronic device, communicatively connected to the computer and being capable of storing digital images” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.9, lines 64-67; col.10, lines 1-18); “an image transfer module, connected to the electronic device and configured to detect the presence of stored digital images in the electronic device and to copy the digital images from the electronic device to the computer memory, by way of said reader” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.10, lines 53-67; col.11, lines 5-13); “a tile uploader module, communicatively connected to the image transfer module and configured to send the digital image to the online server, connected to the computer network” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.11, lines 39-48); and “the online server, being selectively connected to the file uploader module and being configured to automatically accept, store and make available over the computer network the digital image” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.9, lines 5-22).

As to claim 14, Walters discloses the claimed “wherein the portable memory device reader, the image transfer module, the file uploader module and the online server operate to retrieve an image from the portable memory device and make it available over the computer network without requiring any action from a human user other than the placing of the portable memory device in the portable memory device reader” (fig.3 and fig.4; col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62).

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As to claim 15, Walters discloses the claimed “wherein the reading, copying, sending, and making the image available steps are performed without requiring any action from a human user” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62).

As to claim 16, Walters discloses the claimed “wherein the electronic device, the image transfer module, the file uploader module and the online server operate to retrieve an image from the electronic device and make it available over the computer network without requiring any action from a human user other than connecting the electronic device to the computer.” (col.7, lines 5-34, lines 56-67; col.8, lines 1-22, lines 38-62; col.11, lines 39-48).

***Remark***

7. Applicant asserted that Walters does not disclose a portable memory device reader. The examiner disagrees with the precedent assertion. However, when read and analyzed in light of the specification, the invention as claimed does not support Applicants' assertions. The claims do not capture the essence of the invention as argued in applicants' remark page 5. The aforementioned assertions, wherein the portable memory device reader fails to disclose by Walter with regard to the invention of claims 1 and 6, was unsupported by objective factual evidence and was not found to be substantial evidentiary value. Walter, on the other hand, discloses a portable Bluetooth data storage device for transmitting to a first computer device and a customer's data storage represented by the customer web site customer data storage, which allow data to be transferred to a portable hard drive through a wireless connection, wherein the first computer device is accessed from a portable digital image store having attached thereto a



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transceiver for transmitting multi-media data (see, fig.3 and fig.4). Applicant is also asserted that Walter does not disclose an album tools module. The examiner disagrees with the precedent assertion. It is noted, however, the Walter discloses a model that can be used for advertising by posting photos from the Intranet or from the CD on the Internet or through customer's albums. Applicant is interpreting the claims very narrow using the specification without considering the broad teaching of the reference stated in the rejection. Moreover, Applicant is reminded that the examiner is entitled to the broadest reasonable interpretation of the claims. The Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater 162 USPQ 541, 550-51 (CCPA 1969). Walter discloses the invention as claimed. Hence the 35 U.S.C 102 is hereby sustained.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

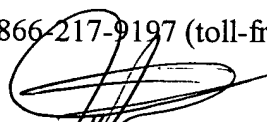
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean M. Corrielus whose telephone number is (571) 272-4032.

The examiner can normally be reached on 10 hours shift.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jean M. Corrielus  
Primary Examiner  
Art Unit 2162

April 11, 2006